

Calendar No. 38

107TH CONGRESS
1ST SESSION

S. 166

To limit access to body armor by violent felons and to facilitate the donation of Federal surplus body armor to State and local law enforcement agencies.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2001

Mrs. FEINSTEIN (for herself and Mr. SESSIONS) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

MAY 10, 2001

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

A BILL

To limit access to body armor by violent felons and to facilitate the donation of Federal surplus body armor to State and local law enforcement agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “James Guefff Body
5 Armor Act of 2001”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) nationally, police officers and ordinary citi-
4 zens are facing increased danger as criminals use
5 more deadly weaponry, body armor, and other so-
6 phisticated assault gear;

7 (2) crime at the local level is exacerbated by the
8 interstate movement of body armor and other as-
9 sault gear;

10 (3) there is a traffic in body armor moving in
11 or otherwise affecting interstate commerce, and ex-
12 isting Federal controls over such traffic do not ade-
13 quately enable the States to control this traffic with-
14 in their own borders through the exercise of their
15 police power;

16 (4) recent incidents, such as the murder of San
17 Francisco Police Officer James Guelff by an assail-
18 ant wearing 2 layers of body armor and a 1997
19 bank shoot out in north Hollywood, California, be-
20 tween police and 2 heavily armed suspects outfitted
21 in body armor, demonstrate the serious threat to
22 community safety posed by criminals who wear body
23 armor during the commission of a violent crime;

24 (5) of the approximately 1,200 officers killed in
25 the line of duty since 1980, more than 30 percent
26 could have been saved by body armor, and the risk

1 of dying from gunfire is 14 times higher for an offi-
2 cer without a bulletproof vest;

3 (6) the Department of Justice has estimated
4 that 25 percent of State and local police are not
5 issued body armor;

6 (7) the Federal Government is well-equipped to
7 grant local police departments access to body armor
8 that is no longer needed by Federal agencies; and

9 (8) Congress has the power, under the inter-
10 state commerce clause and other provisions of the
11 Constitution of the United States, to enact legisla-
12 tion to regulate interstate commerce that affects the
13 integrity and safety of our communities.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) **BODY ARMOR.**—The term “body armor”
17 means any product sold or offered for sale, in inter-
18 state or foreign commerce, as personal protective
19 body covering intended to protect against gunfire,
20 regardless of whether the product is to be worn
21 alone or is sold as a complement to another product
22 or garment.

23 (2) **LAW ENFORCEMENT AGENCY.**—The term
24 “law enforcement agency” means an agency of the
25 United States, a State, or a political subdivision of

1 a State, authorized by law or by a government agen-
 2 ey to engage in or supervise the prevention, detec-
 3 tion, investigation, or prosecution of any violation of
 4 eriminal law.

5 (3) LAW ENFORCEMENT OFFICER.—The term
 6 “law enforcement officer” means any officer, agent,
 7 or employee of the United States, a State, or a polit-
 8 ical subdivision of a State, authorized by law or by
 9 a government agency to engage in or supervise the
 10 prevention, detection, investigation, or prosecution of
 11 any violation of eriminal law.

12 **SEC. 4. AMENDMENT OF SENTENCING GUIDELINES WITH**
 13 **RESPECT TO BODY ARMOR.**

14 (a) IN GENERAL.—Pursuant to its authority under
 15 section 994(p) of title 28, United States Code, the United
 16 States Sentencing Commission shall review and amend the
 17 Federal sentencing guidelines and the policy statements
 18 of the Commission, as appropriate, to provide an appro-
 19 priate sentencing enhancement for any crime of violence
 20 (as defined in section 16 of title 18, United States Code)
 21 or drug trafficking crime (as defined in section 924(c) of
 22 title 18, United States Code) (including a crime of violence
 23 or drug trafficking crime that provides for an enhanced
 24 punishment if committed by the use of a deadly or dan-

1 gerous weapon or device) in which the defendant used
2 body armor.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that any sentencing enhancement under this section
5 should be at least 2 levels.

6 **SEC. 5. PROHIBITION OF PURCHASE, USE, OR POSSESSION**
7 **OF BODY ARMOR BY VIOLENT FELONS.**

8 (a) DEFINITION OF BODY ARMOR.—Section 921(a)
9 of title 18, United States Code, is amended by adding at
10 the end the following:

11 “(35) The term ‘body armor’ means any product
12 sold or offered for sale, in interstate or foreign com-
13 merce, as personal protective body covering intended
14 to protect against gunfire, regardless of whether the
15 product is to be worn alone or is sold as a com-
16 plement to another product or garment.”.

17 (b) PROHIBITION.—

18 (1) IN GENERAL.—Chapter 44 of title 18,
19 United States Code, is amended by adding at the
20 end the following:

21 **“§ 931. Prohibition on purchase, ownership, or pos-**
22 **session of body armor by violent felons**

23 “(a) IN GENERAL.—Except as provided in subsection
24 (b), it shall be unlawful for a person to purchase, own,

1 or possess body armor, if that person has been convicted
2 of a felony that is—

3 “(1) a crime of violence (as defined in section
4 16); or

5 “(2) an offense under State law that would con-
6 stitute a crime of violence under paragraph (1) if it
7 occurred within the special maritime and territorial
8 jurisdiction of the United States.

9 “(b) AFFIRMATIVE DEFENSE.—

10 “(1) IN GENERAL.—It shall be an affirmative
11 defense under this section that—

12 “(A) the defendant obtained prior written
13 certification from his or her employer that the
14 defendant’s purchase, use, or possession of body
15 armor was necessary for the safe performance
16 of lawful business activity; and

17 “(B) the use and possession by the defend-
18 ant were limited to the course of such perform-
19 ance.

20 “(2) EMPLOYER.—In this subsection, the term
21 ‘employer’ means any other individual employed by
22 the defendant’s business that supervises defendant’s
23 activity. If that defendant has no supervisor, prior
24 written certification is acceptable from any other
25 employee of the business.”.

1 (2) CLERICAL AMENDMENT.—The analysis for
 2 chapter 44 of title 18, United States Code, is
 3 amended by adding at the end the following:

“931. Prohibition on purchase, ownership, or possession of body armor by violent felons.”.

4 (c) PENALTIES.—Section 924(a) of title 18, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing:

7 “~~(7)~~ Whoever knowingly violates section 931 shall be
 8 fined under this title, imprisoned not more than 3 years,
 9 or both.”.

10 **SEC. 6. DONATION OF FEDERAL SURPLUS BODY ARMOR TO**
 11 **STATE AND LOCAL LAW ENFORCEMENT**
 12 **AGENCIES.**

13 (a) DEFINITIONS.—In this section, the terms “Fed-
 14 eral agency” and “surplus property” have the meanings
 15 given such terms under section 3 of the Federal Property
 16 and Administrative Services Act of 1949 (40 U.S.C. 472).

17 (b) DONATION OF BODY ARMOR.—Notwithstanding
 18 section 203 of the Federal Property and Administrative
 19 Services Act of 1949 (40 U.S.C. 484), the head of a Fed-
 20 eral agency may donate body armor directly to any State
 21 or local law enforcement agency, if such body armor—

22 (1) is in serviceable condition;

23 (2) is surplus property; and

1 ~~(3)~~ meets or exceeds the requirements of Na-
 2 tional Institute of Justice Standard 0101.03 (as in
 3 effect on the date of enactment of this Act).

4 ~~(c) NOTICE TO ADMINISTRATOR.~~—The head of a
 5 Federal agency who donates body armor under this section
 6 shall submit to the Administrator of General Services a
 7 written notice identifying the amount of body armor do-
 8 nated and each State or local law enforcement agency that
 9 received the body armor.

10 ~~(d) DONATION BY CERTAIN OFFICERS.—~~

11 ~~(1) DEPARTMENT OF JUSTICE.~~—In the admin-
 12 istration of this section with respect to the Depart-
 13 ment of Justice, in addition to any other officer of
 14 the Department of Justice designated by the Attor-
 15 ney General, the following officers may act as the
 16 head of a Federal agency:

17 ~~(A) The Administrator of the Drug En-~~
 18 ~~forcement Administration.~~

19 ~~(B) The Director of the Federal Bureau of~~
 20 ~~Investigation.~~

21 ~~(C) The Commissioner of the Immigration~~
 22 ~~and Naturalization Service.~~

23 ~~(D) The Director of the United States~~
 24 ~~Marshals Service.~~

1 ~~(2) DEPARTMENT OF THE TREASURY.—In the~~
 2 ~~administration of this section with respect to the De-~~
 3 ~~partment of the Treasury, in addition to any other~~
 4 ~~officer of the Department of the Treasury des-~~
 5 ~~ignated by the Secretary of the Treasury, the fol-~~
 6 ~~lowing officers may act as the head of a Federal~~
 7 ~~agency:~~

8 ~~(A) The Director of the Bureau of Alcohol,~~
 9 ~~Tobacco, and Firearms.~~

10 ~~(B) The Commissioner of Customs.~~

11 ~~(C) The Director of the United States Se-~~
 12 ~~cret Service.~~

13 ~~(e) NO LIABILITY.—Notwithstanding any other pro-~~
 14 ~~vision of law, the United States shall not be liable for any~~
 15 ~~harm occurring in connection with the use or misuse of~~
 16 ~~any body armor donated under this section.~~

17 **SECTION 1. SHORT TITLE.**

18 ~~*This Act may be cited as the “James Guelff and Chris*~~
 19 ~~*McCurley Body Armor Act of 2001”.*~~

20 **SEC. 2. FINDINGS.**

21 ~~*Congress finds that—*~~

22 ~~*(1) nationally, police officers and ordinary citi-*~~
 23 ~~*zens are facing increased danger as criminals use*~~
 24 ~~*more deadly weaponry, body armor, and other sophis-*~~
 25 ~~*ticated assault gear;*~~

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2 *interstate movement of body armor and other assault*
3 *gear;*

4 (3) *there is a traffic in body armor moving in*
5 *or otherwise affecting interstate commerce, and exist-*
6 *ing Federal controls over such traffic do not ade-*
7 *quately enable the States to control this traffic within*
8 *their own borders through the exercise of their police*
9 *power;*

10 (4) *recent incidents, such as the murder of San*
11 *Francisco Police Officer James Guelff by an assailant*
12 *wearing 2 layers of body armor, a 1997 bank shoot*
13 *out in north Hollywood, California, between police*
14 *and 2 heavily armed suspects outfitted in body*
15 *armor, and the 1997 murder of Captain Chris*
16 *McCurley of the Etowah County, Alabama Drug Task*
17 *Force by a drug dealer shielded by protective body*
18 *armor, demonstrate the serious threat to community*
19 *safety posed by criminals who wear body armor dur-*
20 *ing the commission of a violent crime;*

21 (5) *of the approximately 1,200 officers killed in*
22 *the line of duty since 1980, more than 30 percent*
23 *could have been saved by body armor, and the risk of*
24 *dying from gunfire is 14 times higher for an officer*
25 *without a bulletproof vest;*

1 (6) *the Department of Justice has estimated that*
2 *25 percent of State and local police are not issued*
3 *body armor;*

4 (7) *the Federal Government is well-equipped to*
5 *grant local police departments access to body armor*
6 *that is no longer needed by Federal agencies; and*

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8 *commerce clause and other provisions of the Constitu-*
9 *tion of the United States, to enact legislation to regu-*
10 *late interstate commerce that affects the integrity and*
11 *safety of our communities.*

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13 *In this Act:*

14 (1) *BODY ARMOR.*—*The term “body armor”*
15 *means any product sold or offered for sale, in inter-*
16 *state or foreign commerce, as personal protective body*
17 *covering intended to protect against gunfire, regard-*
18 *less of whether the product is to be worn alone or is*
19 *sold as a complement to another product or garment.*

20 (2) *LAW ENFORCEMENT AGENCY.*—*The term*
21 *“law enforcement agency” means an agency of the*
22 *United States, a State, or a political subdivision of*
23 *a State, authorized by law or by a government agency*
24 *to engage in or supervise the prevention, detection, in-*

1 *vestigation, or prosecution of any violation of crimi-*
 2 *nal law.*

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 18 *fined in section 16 of title 18, United States Code) or drug*
 19 *trafficking crime (as defined in section 924(c) of title 18,*
 20 *United States Code) (including a crime of violence or drug*
 21 *trafficking crime that provides for an enhanced punishment*
 22 *if committed by the use of a deadly or dangerous weapon*
 23 *or device) in which the defendant used body armor.*

1 (b) *SENSE OF CONGRESS.*—*It is the sense of Congress*
 2 *that any sentencing enhancement under this section should*
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6 jurisdiction of the United States.

7 “(b) *AFFIRMATIVE DEFENSE*.—

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14 lawful business activity; and

15 “(B) the use and possession by the defend-
16 ant were limited to the course of such perform-
17 ance.

18 “(2) *EMPLOYER*.—In this subsection, the term
19 ‘employer’ means any other individual employed by
20 the defendant’s business that supervises defendant’s
21 activity. If that defendant has no supervisor, prior
22 written certification is acceptable from any other em-
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4 (c) *PENALTIES.*—*Section 924(a) of title 18, United*
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6 *“(7) Whoever knowingly violates section 931 shall be*
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 8 *or both.”.*

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12 (a) *DEFINITIONS.*—*In this section, the terms “Federal*
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16 (b) *DONATION OF BODY ARMOR.*—*Notwithstanding*
 17 *section 203 of the Federal Property and Administrative*
 18 *Services Act of 1949 (40 U.S.C. 484), the head of a Federal*
 19 *agency may donate body armor directly to any State or*
 20 *local law enforcement agency, if such body armor—*

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1 (3) *meets or exceeds the requirements of National*
 2 *Institute of Justice Standard 0101.03 (as in effect on*
 3 *the date of enactment of this Act).*

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 7 *notice identifying the amount of body armor donated and*
 8 *each State or local law enforcement agency that received*
 9 *the body armor.*

10 (d) *DONATION BY CERTAIN OFFICERS.*—

11 (1) *DEPARTMENT OF JUSTICE.*—*In the adminis-*
 12 *tration of this section with respect to the Department*
 13 *of Justice, in addition to any other officer of the De-*
 14 *partment of Justice designated by the Attorney Gen-*
 15 *eral, the following officers may act as the head of a*
 16 *Federal agency:*

17 (A) *The Administrator of the Drug Enforce-*
 18 *ment Administration.*

19 (B) *The Director of the Federal Bureau of*
 20 *Investigation.*

21 (C) *The Commissioner of the Immigration*
 22 *and Naturalization Service.*

23 (D) *The Director of the United States Mar-*
 24 *shals Service.*

1 (2) *DEPARTMENT OF THE TREASURY.*—*In the*
2 *administration of this section with respect to the De-*
3 *partment of the Treasury, in addition to any other of-*
4 *ficer of the Department of the Treasury designated by*
5 *the Secretary of the Treasury, the following officers*
6 *may act as the head of a Federal agency:*

7 *(A) The Director of the Bureau of Alcohol,*
8 *Tobacco, and Firearms.*

9 *(B) The Commissioner of Customs.*

10 *(C) The Director of the United States Secret*
11 *Service.*

12 (e) *NO LIABILITY.*—*Notwithstanding any other provi-*
13 *sion of law, the United States shall not be liable for any*
14 *harm occurring in connection with the use or misuse of any*
15 *body armor donated under this section.*

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